



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1991

Mr. Jack Woods
General Counsel, Office of State Fire Marshal
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

OR91-546

Dear Mr. Woods:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12129.

The State Fire Marshall received an open records request for the

State Fire Marshall's Recommendation, contained in letter or document form, dated November 5, 1987, prepared with regard to the Texas Department of Corrections (now Institutional Division of the Texas Dept. Of Criminal Justice), and the original or true and correct copy of which was sent to the Texas Department of Corrections and/or the Texas Board Of Corrections.

You seek to withhold this information pursuant to sections 3(a)(3) and 3(a)(11) of the Open Records Act.

Section 3(a)(11) of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open

Records Decision No. 450 (1986). This office does not agree with your contention that the entire letter in question comes under the protection of section 3(a)(11). You may only withhold pursuant to section 3(a)(11) those portions of the letter that you have designated as Items 3 and 4, beginning with the sentence "To that end"

To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You contend that the information may be withheld pursuant to section 3(a)(3) because it relates to disputed matters in the *Ruiz v. Collins* lawsuit, to which the State of Texas is a party. Although this office has never determined whether one state agency that is not a party to litigation may withhold information pursuant to section 3(a)(3) on behalf of another state agency that is in litigation, we need not reach this issue in this instance. See Open Records Decision No. 132 (1976). The assistant attorney general who is representing the state in the *Ruiz* lawsuit has indicated to this office that the state does not object to the release of the factual information contained in the fire marshal's letter. You may therefore withhold only those portions of the letter that you have identified as Items 3 and 4, beginning with "To that end", pursuant to section 3(a)(11); the remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-546.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/RWP/lcd

Ref.: ID# 12129
ID# 12269

Enclosure: Marked document

cc: Mr. Daniel Johnson
TDCJ-ID No. 274157
Ellis I Unit,
Huntsville, Texas 77343